



Agenda Date: 6/22/05  
Agenda Item: 2F

**State of New Jersey**  
**Board of Public Utilities**  
Two Gateway Center  
Newark, NJ 07102  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

**ENERGY**

IN THE MATTER OF THE ESTABLISHMENT OF A UNIVERSAL SERVICE FUND PURSUANT TO ) SECTION 12 OF THE ELECTRIC DISCOUNT ) AND ENERGY COMPETITION ACT OF 1999 )	APPLICATION PROCESSING AND RELATED MATTERS  DOCKET NO. EX00020091
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(SERVICE LIST ATTACHED)

BY THE BOARD:

**Background**

The Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (EDECA or the Act) provided that the Board establish a non-lapsing Universal Service Fund (USF) to assist low income consumers with the payment of electric and gas bills.

A complex structure exists between the Board, the Department of Human Services (DHS) and the Department of Community Affairs (DCA) in administering the USF Program. Although the legislature designated the Board as the entity responsible for the program, the Board has, through a Memorandum of Understanding with DHS, delegated to that department Program Administration. DHS, in turn, has delegated a portion of its program management responsibilities to DCA through various Memoranda of Understanding. In addition, a USF Working Group comprised of advocacy groups, utilities companies and state agencies provide input and advice to the Board regarding the USF Program.

In this same docket, in a Board Order dated June 30, 2004, the Board previously ordered that certain USF recipients have their benefit year extended. Such extension was premised on designated criteria being met. In March of 2005, Board Staff, based upon the unanimous recommendation of the USF Working Group, directed utilities to allow benefits to expire in April based upon the understanding that the criteria for implementing the June 30, 2004 Board Order had been met.

There are approximately 30,000 USF applications which have yet to be processed on a state-wide basis. There are multiple theories as to the reasons the backlog emerged.<sup>1</sup> The USF Working Group became aware of the backlog as a result of a May conference call in which these numbers of unprocessed applications were announced. Thereupon, Board Staff requested detail on the backlog from DCA. Meanwhile, the expired benefits created an added urgency to resolve the backlog, and contributed to the issue of whether or not a shut-off moratorium should be considered and implemented tailored to USF customers only. These issues were discussed among the USF Working Group but the group did not reach consensus.

Although a backlog of USF applications had been developing, the backlog amounting to over 41,000 applications in early May came as a surprise to the USF Working Group. The combination of a sizeable backlog coupled with the expiration of benefits for a substantial number of enrollees (in excess of 25,000) in the USF program, prompted some members of the Working Group to propose reinstatement of the previously expired benefits, as well as a shut-off moratorium for consideration by the Working Group, Staff and the Board. Meanwhile, both DCA and DHS submitted a joint funding request of approximately \$1.5 million dollars to clear the backlog.

## DISCUSSION

Two issues warrant discussion: the reinstatement of benefits and the backlog. As to the reinstatement of benefits, in its June 2004 Order, the Board stated that “[w]ith respect to the potential gap in the provision of USF benefits during the upcoming USF budget year due to the timing of the completion of the direct USF application system, the Board HEREBY ORDERS that customers who were automatically enrolled in USF in October 2003 shall have their initial benefit year extended until such time as the direct application system is completed and these customers can apply for a recalculation of their eligibility in time to receive their updated USF benefits (if eligible) without an interruption in the delivery of their monthly USF benefit.”

The Board may have intended for there to be seamless benefits, but it is unclear if the Board intended such benefits to be extended under all circumstances, regardless of cost.

The Working Group acknowledged that it unanimously recommended an expiration of the benefits in April of 2005, and originally viewed their actions as consistent with the Board’s June Order. Board Staff initially interpreted the language of the Order as limited to the 2004 budget year and contingent upon when the direct application system was completed and customers could apply for such benefits. The existence of the backlog of the present magnitude was not known by Staff at the time it interpreted the Order nor was the number of enrollees dropped from the USF program known. These changes are so significant as to constitute changed circumstances. In addition, the financial impact of reinstatement makes it an appropriate issue for a Board decision.

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<sup>1</sup> “Backlog” is defined for the purposes of this order, the inability to process an application within thirty days or less of receipt.

Board Staff solicited informal written comments from the USF Working Group on the reinstatement of benefits issue, during a special May 31, 2005 Conference Call (as well as the issue of a possible shut-off moratorium) for those customers “dropped” from USF in April. The Working Group utilities focused on the resolution of the backlog as the most essential issue to be resolved, though no consensus was reached on reinstatement and how such a program might be implemented. Substantial disagreement existed as whether the prior decision to allow customers benefits to expire should be allowed to stand – or whether the issue should be taken to the Board for resolution. Absent a consensus recommendation from the Working Group, Staff presented the issue to the Board for resolution. Concurrent with working with DHS and DCA to resolve the backlog, Staff also reviewed the USF Compliance Filing matter in this docket.

The USF Working Group did not expressly consider or opine on any recommendation concerning the funding request of the agencies. However, it expressed views that prompt resolution of the backlog is critical to the success of the USF Program. The Working Group did not convene to examine the funding issue. Instead, the Working Group focused on the reinstatement of benefits issue. Certain members of the Working Group contend that the intended purpose of the Board’s Order of June 30, 2004, was to create “seamless benefits” for USF customers. Other members of the Working Group emphasized the need for finality of decisions and that it had already considered and weighed the “pros” and “cons” of allowing benefits to expire – as well as reinstatement.<sup>2</sup>

BPU Staff met with DHS staff and DCA staff to address the backlog. Between the announcement of a significant backlog in May, and the submission of a request for additional funding delivered to Staff in June, staff met with representatives from each agency to ascertain the best method to resolve the backlog prior to September 1, 2005 and within the DHS administrative cap set forth in the Board Order dated July 16, 2003, as set forth in this same docket.

Each agency is in the midst of proposing budgets for the upcoming 2006 year and estimating anticipated expenses. DCA alleges that its agency, through the community action programs (CAP) agencies and community-based organizations responsible for direct enrollment, did not have adequate resources to keep pace with the demand of applications submitted and that USF implementation problems have contributed to the backlog. Staff concludes that DCA is the Department best-positioned to resolve the backlog because it oversees the CAP agencies that process the applications in question. DCA has requested \$1.5m to process the applications that have accumulated to date and to continue to process USF applications submitted on an on-going basis. The funding request is based on projected staff time necessary to process individual applications, as well as the cost of supervision in cases where multiple staff is hired to

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<sup>2</sup> Staff notes that the estimated cost of reinstating customers at their prior benefit level for a period necessary to resolve the backlog is approximately \$1 million dollars per month, calculated based on the average benefit amount (\$40) multiplied by the number of customers eligible for reinstatement (approximately 25,000) for the time period of May –September 2005 (5 months). Therefore, the total “cost” of reinstating customers and resolving the backlog may exceed \$6 million dollars. However, it is likely that many of these customers would have applications pending.

process applications. The \$1.5m is deemed by both DHS and DCA as an administrative expense associated with USF implementation costs and the resolution of the backlog. This request causes DHS to seek Board approval to exceed its spending cap, as noted above.

## **RECOMMENDATIONS**

Staff agrees with the prior recommendation of the Working Group to allow benefits to expire upon a date certain and stands by its prior interpretation; however, the changed circumstances of the backlog combined with the unintended impact of the expired benefits requires the issue to be addressed by the Board. The expense of reinstatement is not insignificant. Staff notes that its support of the reinstatement option at this time is premised on the Board's policy goals. In light of the need to build a successful USF program over time and to successfully re-enroll customers, as well as the fact that customers did not receive notice of the expiration of their benefit, reinstatement may be the only option to achieve the Board's policy goals. Any reinstatement would ideally distinguish between extending benefits to 1) customers who have been re-instated and found eligible through a subsequent USF application and 2) customers subsequently found not eligible or for whom no application has been submitted prior to the occurrence of the backlog.

Based on the Board's policy goals, staff proposes that any Board decision to re-instate prior USF customers and retroactively grant benefits to all USF customers and allow Board Staff with utilities sufficient flexibility to effectuate such a reinstatement<sup>3</sup> and limit the reinstatement remedy to a definitive time when DHS and DCA project the backlog will be cleared. As to the issue of "shut-offs" Staff notes that inadequate evidence exists to support a finding that "but for" the loss of the USF benefit, large numbers of people would be "shut-off" as alleged, especially if the Board crafts a suitable reinstatement policy. Staff recommends that the Board monitor the situation and use its existing procedures to address shut-offs, and if necessary, address the situation by separate order.

## **FINDINGS AND ORDER**

The Board **HEREBY RE-AFFIRMS** its goal for the USF Program as expressed in the June 30, 2004 Order is to provide uninterrupted benefits, to the extent possible, to the October 2003 enrollees, within a reasonable cost and based on available funds.

The Board **HEREBY FINDS** the general purposes for reinstatement are to: 1) maximize re-enrollment of eligible persons in the USF program and to compensate those whose benefits lapsed for any loss in benefit and 2) avoid penalizing USF customers enrolled in the "Fresh Start"<sup>4</sup> program from any negative impacts of the loss of a USF credit.

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<sup>3</sup> *There are significant programming issues and administrative complexity involved in ensuring that similarly situated USF recipients are treated comparably, as all seven utilities have different computer systems and implementation methods – and each customer's situation is unique.*

<sup>4</sup> *Fresh Start is a program designed to afford USF customers forgiveness of arrearages under certain conditions.*

The Board **HEREBY ORDERS** the utilities to re-instate all previous USF customers whose benefits expired as of April 30, 2005 or thereafter to the USF Program, subject to eligibility determinations made by DHS. The Board **HEREBY DIRECTS** each utility to retroactively apply USF benefits to customer accounts in such a manner that the customer will be compensated for any "gap" in benefits that occurs during the Reinstatement Period of May 1, 2005 - September 30, 2005 ("Reinstatement Period"). The Board **HEREBY ORDERS** each utility to implement this order within the next possible billing cycle and to complete such reinstatement by no later than the close of the September 2005 billing cycle and **HEREBY PROVIDES** for the recovery of programming expenses incurred by utilities in carrying out reinstatement, provided such expenses are deemed "reasonable" by the Board.

The Board **HEREBY FINDS** the administrative complexity of reinstating benefits warrants granting Board Staff with utilities flexibility in implementing a system to issue retroactive benefits. The Board **HEREBY AUTHORIZES** Staff to work with each utility to set procedures involving the implementation of reinstatement, consistent with the Board's intent as expressed in this Order and to resolve programming and payment conflicts stemming from the possible issuance of new USF benefits during the Reinstatement Period, as applications are processed. The Board **HEREBY DIRECTS** Board staff to report to the Board the policy implemented to resolve such conflicts. Such policy directives are deemed administrative in nature provided they do not significantly alter the Board's intent of reinstating customers and retroactively applying benefits to the majority, but perhaps not every, USF customer who previously received USF benefits prior to the April 2005 expiration.<sup>5</sup>

The Board **HEREBY APPROVES** the additional funding request of \$1.5m to DHS, notwithstanding that such request exceeds the \$3m administrative budget cap based on projected budgets and expenses submitted by DCA, and the representation that the funds are necessary to clear the backlog by July 31, 2005, or as soon thereafter as possible, as well as to continue to process applications through the end of October 31, 2005. The Board **HEREBY AUTHORIZES** the Board President to execute a Memorandum of Understanding and take any administrative actions necessary to facilitate and complete any transfer of funds as set forth above.

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<sup>5</sup> The Board recognizes that customers who have since moved may be difficult to locate and may not receive their intended benefit if the utility is unable to locate them, and that other circumstances may prevent a 100% success rate with reinstatement.

Conclusion

In summary, the Board HEREBY APPROVES the following

An additional \$1.5m funding request of DHS to resolve the backlog and complete USF application processing between the date of this Order and October 31, 2005;

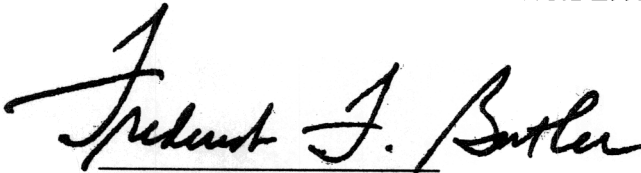
The reinstatement of benefits of all USF customers whose benefits expired in April 2005, or thereafter subject to exceptions as set forth above, or determined by Board Staff.

DATED: 6/30/05

BOARD OF PUBLIC UTILITIES  
BY:



JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

